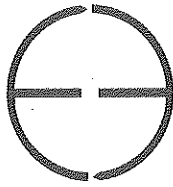


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November 7, 2007

Ms. Mary Nichols, Chair
Air Resources Board
1001 'I' St.
Sacramento, CA 95812

RE: Development of The Scoping Plan

Dear Mary:

As a result of the enactment of AB 32, Health and Safety Code Section 38561 requires the Air Resources Board to "...prepare and approve a scoping plan, as that term is understood by the state board, for achieving the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions from sources or categories of sources of greenhouse gases by 2020...." The statute also directs the board to consult with all state agencies and, in particular, the CA Public Utilities Commission and the CA Energy Resources Conservation and Development Commission on elements of the plan relating to "electrical generation, load based-standards or requirements, the provision of reliable and affordable electric service, petroleum refining, and statewide fuel supplies to ensure the greenhouse gas emissions reduction activities to be adopted and implemented by the state board are complementary, nonduplicative, and can be implemented in an efficient and cost-effective manner."

In order to further assist the board in this task, the statute again directs the board to: identify reduction and compliance measures; consider local regional and international programs; evaluate economic and non-economic benefits; account for proportional GHG emission contributions; give credit for voluntary and sequestration actions; conduct workshops in environmental justice communities and update the plan every five years.

The California Council for Environmental and Economic Balance (CCEEB) submits this letter to provide you its views on the important components of a Scoping Plan.

Market Based Compliance Measures - § 38561(b)

It is CCEEB's position that no element of a scoping plan is more critical than the establishment of a successful market mechanism, specifically a cap and trade program.

In Executive Order S-20-06, Governor Schwarzenegger directed the state to implement a market-based protocol to achieve the goal of reducing greenhouse gas emissions in California. The Governor recognized that such an aggressive environmental goal can be most effectively and efficiently achieved using a market-based approach. By directing emissions reduction activities in the most efficient and effective way, market-based mechanisms allow the state to meet its goal with the lowest economic impact on the state economy.

Success with market-based emissions regulations is driven by encouraging behavior through market signals rather than through explicit directives, often described as "harnessing market forces." A properly designed and implemented market-based program will allow any emission abatement program to be realized at the lowest overall cost to society while promoting the development of new ideas and technology.

Cap-and-trade systems exert constant pressure on participants to reduce emissions while allowing flexibility in the process. This encourages companies to meet (or exceed) their emission targets in the most innovative and cost-effective way possible. By promoting innovation, cap-and-trade systems can help slow the pace of global warming while spurring the development of new technologies and industries that will contribute to the long-term growth of the California and U.S. economies.

Any program must create the regulatory confidence necessary to encourage investments; and as such, CCEEB suggests that other principles and design factors be given high consideration as creation of a program that allows California entities to document and validate voluntary early actions is an important programmatic element that the Board should emphasize. As with other aspects of program design, data reporting and verification must anticipate integration into other regional, national and international programs, and as such, should not be overly burdensome, ensure consistent data security and similar data elements.

By contrast, conventional "command-and-control" regulations provide little if any flexibility with regard to how firms achieve their environmental goals. Such regulations require firms to implement a pollution-control burden that may not be the most cost-effective means of meeting program goals. Regulations establish uniform standards for all participants and in many cases specify the actual equipment firms must use to comply. In addition, command-and-control regulations tend to freeze the development of technologies that might otherwise result in greater levels of control. With little or no financial incentive for businesses to exceed their control targets, firms are not encouraged to develop new ideas and technologies. Moreover, it is not realistic to expect that command and control regulatory packages covering a wide spectrum of

sectors with their attendant variances, exceptions, enforcement mechanisms, etc. can be expected to achieve the total emission reduction goals mandated by AB 32.

In CCEEB's view it is critical that any command and control requirements deemed necessary to assist in the achievement of AB 32 emission reductions do not disrupt or undermine a market-based program by starving the market or creating a buyers-only program.

CCEEB also believes that emission reductions that exceed the requirements of command and control or reductions achieved through a market-based program should be fully fungible to allow trading of those emission reductions among sectors. Furthermore, we believe these credits should be available for trading without regard to borders.

We are confident that environmental and economic objectives are attainable if we promptly enact an economy-wide, market-driven approach that includes, among other things, a well-crafted cap-and-trade program that places specific limits on greenhouse gas emissions, robust cost-containment measures, complementary policies and measures, and a fully funded research, development, demonstration and deployment program for climate-friendly technologies.

Voluntary Actions - § 38561(f)

CCEEB believes that a market program will do a better job of finding the most cost effective and technologically feasible ways of accomplishing GHG emission reductions than government through extended rulemaking. Nevertheless, if CARB is going to proceed to attempt to develop all 44 additional early action measures as regulations, as its October 25, 2007 Board proceeding would indicate, it is in everyone's interest to first establish "cost effectiveness and technology feasibility" criteria that can be applied consistently to all potential measures, and to do so as soon as possible. Otherwise, potential voluntary GHG emission project developers will be in an uncertain position and will not likely go forward with investments that would be at risk of being invalidated if their measure were to be adopted as a regulation. As a result, there is a substantial chance that the state will miss potential early reductions of GHG. Additionally, the absence of clear criteria for cost effectiveness and technological feasibility could lead to the adoption of requirements that lead to leakage.

CCEEB urges CARB to provide expedited approval of offset and voluntary early action protocols long in advance of the start of regulatory standards, so that regulated entities have an incentive to begin the planning and investment to get projects on line given the long lead time for project development. Offset and trading markets in regulated commodities do not develop overnight. Markets require long ramp-ups and systems development and investment to gain the necessary interest and liquidity.

AB 32 requires that CARB give credit for voluntary early emission reduction actions and provides that the agency develop a methodology for granting credit without a lengthy rulemaking pursuant to the Administrative Procedure Act. The Legislature clearly intended that rapid innovation to reduce GHG be an integral part of the implementation

of AB 32. We encourage CARB to work with stakeholders to define a process by which credit for voluntary early emission reduction actions is as efficient as possible. Such a process will give business the certainty to make investment decisions in GHG reduction projects now. This is a critical step the state can make in reaching its goal because these early measures will reduce GHG years before regulations can be promulgated. The voluntary early action process should be used by CARB to encourage real and rapid reductions in GHG emissions and as a means to gather experience upon which to build incentives for such reduction projects into its final rules.

Many industries in the state for a variety of reasons, some economic, some practical and some out of a desire to reduce greenhouse gas emissions have already begun the process of converting to lower GHG emission equipment and stationary plants. Examples of these actions are plentiful and range from converting from diesel generators to electrical, utilization of solar irrigation pumps and technologies, switching from current high emission fuels to new Biofuels, to replacing older equipment and buildings with more energy efficient units to name a few. These efforts need and deserve to be given credit for the reduction in GHG emissions they deliver prior to any baseline being calculated and established as a reference point for any future reduction mandates.

Consideration of Regional and International Programs - § 38561(c)

There are a number of emission reduction programs on the regional or international level for the board to review. All have program variations and degrees of success in their attempts to control emissions. Whether the subject is acid rain or greenhouse gases, the RECLAIM program in Los Angeles, the EU-ETS system in Western Europe, the Western Climate Initiative, or the Regional Greenhouse Gas Initiative of the East Coast all bear close scrutiny, review and evaluation.

AB 32 is truly “landmark” legislation and must tie in to future regional, national and international efforts to affect climate change. For that reason actions taken to implement this program need to look beyond California-specific nuances and address issues in a manner that prevents leakage through cost effective and technologically feasible implementation requirements as well as through a robust market and offset program that is attractive and functional to entities in California, other states and the nation and designed to be incorporated into national and international programs.

Proportionality of GHG Emissions - § 38561(e)

AB 32 requires that, “In developing its [scoping] plan, the state board shall take into account the relative contribution of each source or source category to statewide greenhouse gas emissions....” As the board deliberates this requirement a final determination must be made of the statewide total of all emissions. Once this has been accomplished which will not be an easy task in itself, a proportional burden determination can be made.

From this total, the share of each sector would be equal to its share of the established emissions total. Each sector would be responsible for a proportional part of the total emission target. Since the transportation sector is responsible for approximately 41% of total emissions, their burden of the reductions would, likewise, be 41%. The electrical power sector approximately 21%, and so forth. In setting the baseline however, it is important that some mechanism be developed to give credit for recently instituted GHG reduction requirements and for sectors that have demonstrated GHG emission reductions since the 1990 baseline. In no circumstances should one sector be required to subsidize the proportional burden of another sector.

The disadvantage of this approach is that it does not take into account the potential for emission reductions, technical innovation, cost-effectiveness of reductions and expected economic development within the sectors. However, its' primary advantage is that it is relatively simple, straightforward, transparent and avoids the problem of data availability.

Evaluate Economic and Non-economic Impacts § 38561(d)

In an apparent attempt to comply with this section of AB 32, the California Environmental Protection Agency acting through the Climate Action Team (CAT) released its' "Updated Macroeconomic Analysis of Climate Action Strategies Presented In The March 2006 Climate Action Team Report" this past September 7.

CCEEB believes that macroeconomic analysis is essential in the development of a scoping plan and additional elements of planning and assessment of the implementation of AB 32. Macroeconomic analysis is a powerful tool for evaluating the costs of various regulatory alternatives and should play an important role in the ultimate selection of the final regulatory approach. While we appreciate the effort undertaken to update the emission reduction estimates of the climate strategies presented in the 2006 CAT Report, we are concerned that the macroeconomic impact analysis presented is not as robust and complete as was expected. We trust that as your work progresses that the ARB will revisit the CAT's assessment of the NRM-NEEM Model and incorporate its results in your deliberations.

The outcome of the MRN-NEEM model is more in line with economic modeling of cap and trade programs, which consistently demonstrate that performance standards and other programs outside of a pure cap and trade program are not as economically efficient, unless addressing a specific market failure (such as building construction and leasing). It also demonstrates that assumptions made by policy makers about the existence and scope of market failures can have significant implications on policy costs. By dismissing these outputs, and not using them to assess the outcomes of the other models, ARB is missing an opportunity to get a broader picture of the impacts of a set of non-market-based policies.

CCEEB does not support one model over another. However, we believe that the ARB should be fully informed as it considers policy choices in developing its scoping plan.

Excluding the results of one of the most sophisticated economic models available today because it is designed to function optimally by computing cost and benefits rather than inputting assumptions of costs and benefits, deprives the state of the use of a powerful tool that can provide valuable insight into the economic implications of difficult policy choices.

CEQA Application

While clearly unanticipated at the time of enactment of AB 32, the application of the California Environmental Quality Act (CEQA) has since been raised as an issue in numerous projects and in remedial legislation – and should be addressed by ARB as an element of the Scoping Plan. Even at this early stage in the AB 32 process, affected entities are already attempting to market their emission reductions to assist others in complying with CEQA, many months before ARB develops the full Scoping Plan. Additionally, this year the legislature enacted a budget trailer bill mandating that the Governors Office of Planning and Research (OPR) develop guidelines to assist public agencies in the mitigation of GHG emissions or the effects of GHG's as required under CEQA.

CEQA generally requires lead agencies to analyze the significant environmental effects of projects prior to their approval, and to mitigate, or address, those effects where feasible. AB 32, however, requires the ARB to adopt rules and regulations to achieve cost-effective and technologically feasible reductions in GHG emissions. AB 32 could not be clearer in placing the responsibility and jurisdiction regarding GHG measures with ARB:

“CHAPTER 4. Role of State Board

38510. The State Air Resources Board is the state agency charged with monitoring and regulating sources of emissions of greenhouse gases that cause global warming in order to reduce emissions of greenhouse gases.”

Yet, the State Attorney General has now jumped ahead of the AB 32 process by actively challenging several major development projects throughout California based on inadequate CEQA review for failure to take into account the GHG emissions potentially resulting from the project. During the period between April and August of 2007, 48 CEQA documents submitted to the OPR State Clearinghouse contained some discussion of GHG emissions as an environmental impact of those projects. These projects varied from oil refinery expansions and habitat restorations to large housing projects. Statewide guidance on key CEQA questions, such as level of significance, is needed now to avoid a patchwork of different determinations in different areas of the state. CCEEB believes that it is in the state's interest to avoid CEQA determinations that may undermine voluntary early actions, forego immediate GHG reductions and go beyond the legislative intent of AB 32.

Organizations such as the CA Air Pollution Control Officers Association, the League of California Cities and the CA State Association of Counties are already in the process of developing recommended guidelines for CEQA compliance with GHG emissions reductions. They recognize that CEQA itself provides that public agencies should look to ARB for leadership and sound policy in integrating CEQA with AB 32:

“**21081.** Pursuant to the policy stated in Sections 21002 and 21002.1, no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

(a) The public agency makes one or more of the following findings with respect to each significant effect:

(1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

(2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

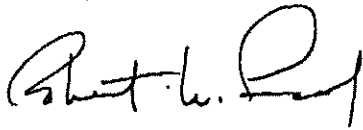
(b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.”

(Ca Public Resources Code; emphasis added).

Therefore, as an element of the Scoping plan, CCEEB would encourage CARB to confirm its “responsibility and jurisdiction” for GHG mitigation for all projects at all facilities covered by the AB 32 programs and Scoping Plan and also to be cognizant of the far reaching impacts of GHG emissions reduction strategies on economic development projects in California. It’s impact on future land-use decisions made by the myriad of local government entities within the state’s borders dictate that extreme caution be exercised in the integration of CEQA into the framework of AB 32 and that ARB take the lead as part of its responsibility and jurisdiction under AB 32.

CCEEB offers these comments as recommendations and suggestions to the Board as it embarks upon the difficult task of developing and implementing a scoping plan that will have enormous impacts on the economic, social and political life of California for many years to come. If we can be of further assistance please feel free to call us at anytime.

Sincerely,



Robert Lucas
Climate Change Project Manager



Gerald D. Secundy
President

cc: Dan Dunmoyer, Deputy Chief of Staff, Office of the Governor
Brian Prusnek, Deputy Cabinet Secretary, Office of the Governor
Linda Adams, Secretary, CA Environmental Protection Agency
James Goldstene, Executive Office, Air Resources Board
Cindy Tuck, Undersecretary, CA Environmental Protection Agency
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